

AMENDMENT
Appln. No. 10/713,444
Docket No. 442005-00108

REMARKS

Restriction Requirement

Claims 1-19 were pending in this application. The Examiner has indicated that the application is subject to a requirement for restriction under 35 U.S.C. § 121, and alleged that the application contains claims drawn to two distinct inventions:

- Group I. Claims 1-17, drawn to a multi-level chair for supporting a post-tension reinforcement cable.
- Group II. Claims 18-19, drawn to a method of supporting a post-tension reinforcement cable.

The Applicant acknowledges the Examiner's telephone communication of March 6, 2006 and affirms Mr. Poffenberger's provisional election to prosecute the invention of Group I without traverse. Claims 18-19 have been withdrawn from further consideration by the Examiner as being drawn to a non-elected invention, and claims 1-17 remain pending.

The Examiner has also alleged that the application discloses multiple patentably distinct species:

- Species I. Shown in Figures 3-4.
- Species II. Shown in Figure 5.
- Species III. Shown in Figure 6.
- Species IV. Shown in Figure 7.

The Applicant further affirms Mr. Poffenberger's apparent election of Species I for examination with traverse ("Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed"), and submits that claims 1-14 and 16-17 are readable

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on Species I. We respectfully traverse this portion of the Examiner's requirement for restriction, and argue that the Examiner has failed to show that there would be a serious burden on the Examiner if restriction is not required. MPEP 803; 808.02. The Examiner has not shown by appropriate explanation (A) separate classification; (B) separate status in the art; or (C) a different field of search. Where the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among independent or related inventions. MPEP 808.02. In view of the foregoing, the Examiner's election of species requirement is improper, and we request that the Examiner withdraw the requirement.

Rejection of claim 15 under 35 U.S.C. § 112

The Examiner has rejected claim 15 as failing to comply with the written description requirement, alleging that matter supporting the language "feet are joined by a base plate" has not been disclosed in the specification or drawings.

Claim 15 is drawn towards a non-elected species (Species IV) in the examination. In the event that the election of species requirement is withdrawn or a generic claim becomes allowable, the Applicant submits that support for the cited portion of the claim is found in the specification at page 13, lines 7-10, and in Figure 7 (reference numeral 60). We respectfully argue that the cited disclosure is more than sufficient to satisfy the written description requirement of § 112, and request that the Examiner withdraw the rejection.

Rejection of claims 1-4, 6-10, 12-14 and 17 under 35 U.S.C. § 102

The Examiner has rejected claims 1-4, 6-10, 12-14 and 17 as being anticipated by the disclosure of U.S. Patent No. 4,644,727 to Hanson et al., and alleges that Hanson discloses a

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body having a plurality of receptacles or multiple receptacles (Figure 1, elements 12; Figure 5, element 30) at different heights from bottom of the concrete form.

The Applicant has considered the Examiner's rejection and amended independent claims 1, 6 and 12 to more particularly point out and distinctly claim the subject matter which the Applicant regards as his invention. Claim 1 now requires "a body including a plurality of receptacles, the plurality of receptacles comprising a vertically oriented array of receptacles positioned at different heights from the bottom of the concrete form, said receptacles in the array being spaced at a fixed vertical interval and being adapted to support a post-tension reinforcement cable of a predetermined diameter." Comparing the claim with Hanson et al. (4644727), we note that the strand receiving cups 12 in the lower chair portion of the Hanson device do not constitute a vertically oriented array of receptacles because the lower chair portion provides, at most, two levels of receptacles. We further note that if the strand cup 30 in the upper chair portion of the Hanson device is characterized as an element of such an array then the receptacles in the array are not spaced at a fixed vertical interval as required in the claim. The Applicant does not require that every receptacle be characterized as an element of such an array, however the Applicant does require that at least three receptacles form a vertically oriented array having receptacles spaced at a fixed vertical interval. Such a configuration is disclosed in each of the species of the invention identified by the Examiner. Thus, we respectfully argue that the Hanson device does not anticipate the amended claim, and request that the Examiner find the amended claim to be allowable. We further note that the amended claim is generic to Species I-IV as identified by the Examiner.

For at least the reasons set forth above, we also respectfully argue that claims 2-5, being dependent from amended claim 1, are not anticipated by the Hanson device, and request that the Examiner withdraw these rejections.

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Claim 6 now requires "an inverted V-shaped body having a pair of legs extending downwardly from an apex of said body, said body including multiple receptacles comprising a vertically oriented array of receptacles positioned at different heights from the bottom of the concrete form along at least one of said legs, each of said receptacles in the array being spaced at a fixed vertical interval and being sized to support said post-tension reinforcement cable so that a user may place said post-tension cable in a selected one of said receptacles." Comparing the claim with Hanson et al. (4644727), we again note that the strand receiving cups 12 in the lower chair portion of the Hanson device do not constitute a vertically oriented array of receptacles, and that if the cup 30 in the upper chair portion is characterized as an element of such an array, the cups are no longer spaced at a fixed vertical interval. Thus, we respectfully argue that the Hanson device does not anticipate the amended claim, and request that the Examiner find the amended claim to be allowable. We further note that the amended claim is generic at least with respect to Species I and IV as identified by the Examiner.

For at least the reasons set forth above, we also respectfully argue that claims 7-11, being dependent from amended claim 6, are not anticipated by the Hanson device, and request that the Examiner withdraw these rejections.

Claim 12 now requires "an inverted V-shaped body having a pair of legs extending downwardly from an apex of said body, each of said legs having a fixed length and multiple receptacles comprising a vertically oriented array of receptacles, said receptacles in the array being spaced at a fixed vertical interval and positioned at different heights from the bottom of the concrete form along said length of said leg for supporting said reinforcement cable, wherein a user may support said reinforcement cable in a selected receptacle." Comparing the claim with Hanson et al. (4644727), we again note that the strand receiving cups 12 in the lower chair portion of the Hanson device do not constitute a vertically oriented array of receptacles, and that

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if the cup 30 in the upper chair portion is characterized as an element of such an array, the cups are no longer spaced at a fixed vertical interval. Thus, we respectfully argue that the Hanson device does not anticipate the amended claim, and request that the Examiner find the amended claim to be allowable. We further note that the amended claim is generic at least with respect to Species I and IV as identified by the Examiner.

For at least the reasons set forth above, we also respectfully argue that claims 13-14 and 16-17, being dependent from amended claim 12, are not anticipated by the Hanson device, and request that the Examiner withdraw these rejections.

Rejection of claims 9 and 16 under 35 U.S.C. § 103(a)

The Examiner has rejected claims 9 and 16 as being obvious as a mere design consideration which fails to patentably distinguish over Hanson et al. (4644727). The Applicant respectfully submits that the Examiner has failed to appreciate the disclosed purpose of the Applicant's device, as reflected in the now-amended claims.

Hanson teaches that the lower chair "permits the use of the stand chair to support up to three lower strands inserted in either the widely spaced or closely spaced slots depending upon the orientation of the lower member 10." Col. 2 ll. 51-54. Hanson further teaches the use of "an upper chair 29 which supports the top strand 54 in strand cup 30." Col. 2 ll. 35-36. See also col. 1 ll. 31-36, col. 4 ll. 52-55, and Figs. 9-13. Hanson does not teach that a workman may place the same type of strand in different receptacles positioned at different heights in the Hanson device, e.g., a lower strand in cup 30 or a lower strand in a cup 12 adjacent to surface 42. Hanson also does not teach that a workman may select the heights at which to embed a strand while using the same device, i.e., the height of strand 44 relative to surface 42 when using the same device is a constant.

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The Applicant's claimed array of receptacles positioned at different heights from the bottom of the concrete form permits a workman to select a receptacle, and thereby a height, at which to position a concrete reinforcement cable while using a single device. The claimed vertical spacing elements facilitate the workman's ability to construct a concrete section using identical copies of a single device, selecting a receptacle positioned at a particular height rather than a particular device having a receptacle at a height. Such a problem and purpose is disclosed in the Applicant's specification at page 3 ll. 6-23.

In view of the foregoing, we respectfully argue that there was no teaching, motivation, or suggestion at the time the invention was made that would lead one of ordinary skill in the art to modify Hanson to provide a vertically oriented array of receptacles, the receptacles in the array being spaced at a fixed vertical interval, and the receptacles being vertically spaced from each other one-quarter inch, as recited in claim 9, or one-half inch, as recited in claim 16.

Allowable Subject Matter

The Applicant thanks the Examiner for her determination that claims 5 and 11 would be allowable if rewritten in independent form. The Applicant submits a new claim 20 for consideration, the new claim representing claim 5 rewritten in independent form including all the limitations of base claim 1 and intervening dependent claim 3. The Applicant has changed the term "pretermind" to "predetermined" to correct a typographical error present in the original base claim.

Conclusion

The Applicant respectfully submits that the application is in condition for allowance, and requests favorable consideration of the amended claims. We hereby authorize the Commissioner

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under 37 C.F.R. § 1.136(a)(3) to treat any paper that is filed in this application which requires an extension of time as incorporating a request for such an extension. The Commissioner is authorized to charge any additional fees required by this paper or to credit any overpayment to Deposit Account No. 20-0809.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Jaglowski', is written over a horizontal line.

David R. Jaglowski

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